

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOUGLAS P. BROWN, Plaintiff :
 :
VS. : NO.04-177 ERIE
 :
EDMOND CHEVROLET, INC., SHULTS :
SALES AND LEASING, INC., EDMOND :
R. SHULTS, JR., TIM M. SHULTS, :
Defendants :

DEFENDANTS' MOTION
PER F.R.C.P. 37 FOR
PLAINTIFF'S FAILURE TO MAKE
DISCOVERY OR COOPERATE IN DISCOVERY

AND NOW come the Defendants, EDMOND CHEVROLET, ET AL, by their attorney, ANDREW J. CONNER of CONNER RILEY & FRYLING, and file this Motion, per F.R.C.P. 37, for relief from Plaintiff's failure to make discovery or cooperation in discovery, alleging as follows:

1. This Motion is filed per F.R.C.P. 37 as a consequence of the Plaintiff's repeated failures to make any discovery or cooperate in discovery, as permitted by the Federal Rules of Civil Procedure.

2. Defendants have filed and served the following formal discovery Requests:

- (a) July 25, 2005 F.R.C.P. 34 Request for copies of Plaintiff's relevant documents (Exhibit "A");
- (b) August 2, 2005 F.R.C.P. 30 Interrogatories directed to Plaintiff (Exhibit "B"); and
- (c) July 12, 2005 Notice scheduling depositions of the Plaintiff and his wife on August 25, 2005 (Exhibit "C").

3. Attached hereto as Exhibits "D" are Defendants' counsel's letters to Plaintiff's counsel dated July 12, 2005, July 25, 2005, August 2, 2005, August 12, 2005 and August 22, 2005 regarding the above discovery.

5. Plaintiff has refused to make any discovery in this action including, but not limited to, the following:

- (a) Refused to provide any documents responsive to Defendants' Request for Production (Exhibit "A");
- (b) Refused to answer Defendants' Interrogatories (Exhibit "B");
- (c) Failed to appear for their scheduled depositions (Exhibit "C"); and
- (d) Failed to provide an alternative suitable date for their depositions to be taken between the time it was originally scheduled and October 1, 2005.

6. Defendants' Pre-Trial Narrative Statement is currently due to be filed on or prior to December 16, 2005 and Defendants, because of Plaintiff's refusal to make discovery, have incurred substantial prejudice. Defendants will have substantial difficulty in complying with the Court's July 27, 2005 Order in preparing and filing their Pre-Trial Narrative Statement and completing discovery prior to October 7, 2005, as required by the July 27, 2005 Court Order.

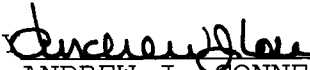
7. As a consequence of Plaintiff's refusal to make discovery, Defendants request this Honorable Court to do the following:

- (a) Enter an Order dismissing Plaintiff's action with prejudice;
- (b) Enter an Order precluding any testimony by the Plaintiff, his wife and/or any witnesses who would be identified in the Answers to Interrogatories, if Plaintiff provided full and complete Answers to those Interrogatories;
- (c) Enter an Order precluding Plaintiff and his wife from offering any documentary evidence at the time of trial which would have been responsive to the Defendants' Request for Production;
- (d) Enter an Order in favor of Defendants awarding costs for the additional expenses Defendants will incur in preparing their Pre-Trial Narrative Statement required by this Court and the Federal Rules of Civil Procedure;
- (e) Grant Defendants a 60 day extension of time in which to complete discovery and an additional 60 days to file their Pre-Trial Narrative Statement with the information and documents presently available and which may be available to the Defendants while conducting discovery from sources other than the Plaintiff, considering he and his wife refuse to provide discovery.

WHEREFORE, Defendants request this Honorable Court to enter the suggested Order attached to this Motion.

Respectfully submitted,

CONNER RILEY & FRYLING

By 
ANDREW J. CONNER, ESQUIRE
ATTORNEY FOR DEFENDANTS
17 West Tenth Street
P.O. Box 860
Erie, PA 16512-0860
(814) 453-3343

DATED: September 14, 2005.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion was served upon W. Patrick Delaney, counsel for Plaintiff, 100 State Street, Suite 700, Erie, Pennsylvania 16507, this 14th day of September, 2005.

CONNER RILEY & FRYLING

BY Andrew J. Conner
ANDREW J. CONNER, ESQUIRE
ATTORNEY FOR DEFENDANTS
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